

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,	§	
	§	
VS.	§	CRIMINAL ACTION NO. C-06-643-1
	§	
JOSE SANTOS CANTU, JR.	§	
	§	
Defendant.	§	

**ORDER**

On this day came on to be considered the “Motion to Dismiss Appeal” filed in the above-styled action on November 27, 2007 by Defendant Jose Santos Cantu, Jr. (D.E. 110.) The Motion reads, in its entirety: “Now comes Jose Santos Cantu Jr., Appellant in the above styled and numbered case, and respectfully moves this Court to withdraw appellant’s notice of appeal and dismiss this appeal.” (D.E. 110, at 1.)

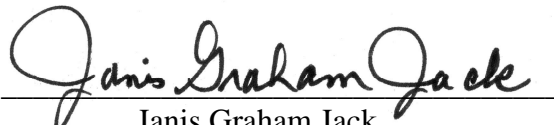
“The filing of a timely and sufficient notice of appeal transfers jurisdiction over matters involved in the appeal from the district court to the court of appeals. The district court is divested of jurisdiction to take any action with regard to the matter except in aid of the appeal. The district court may dismiss an appeal which has not been docketed upon signed stipulation for dismissal by all parties or upon motion and notice by the appellant. After the appeal is docketed, dismissal may be effected only in the court of appeals.” U.S. v. Hitchmon, 602 F.2d 689, 692 (5th Cir. 1979) (en banc) (citing, inter alia, Fed. R. App. P. 42(a) (“Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant’s motion with notice to all parties.”); see also U.S. v. Clark, 917 F.2d 177, 179 (5th Cir. 1990) (same).

Defendant Jose Santos Cantu, Jr. was sentenced by this Court on November 9, 2007, and Judgment was subsequently entered. (D.E. 104 & 108.) On November 18, 2007, Defendant timely filed a Notice of Appeal in this Court. (D.E. 106.) On November 28, 2007, Defendant's appeal was docketed in the U.S. Court of Appeals for the Fifth Circuit.<sup>1</sup> (D.E. 111.)

As of November 28, 2007, this Court was "divested of jurisdiction to take any action with regard to the matter." Hitchmon, 602 F.2d at 692. Therefore, pursuant to Federal Rule of Appellate Procedure 42, Defendant's "Motion to Dismiss Appeal" (D.E. 110) is DENIED.

The Clerk of this Court is ordered to provide the Clerk of the Fifth Circuit with a copy of Defendant's "Motion to Dismiss Appeal" and this Order.

SIGNED and ORDERED this 5th day of December, 2007.

  
Janis Graham Jack  
United States District Judge

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<sup>1</sup> The Fifth Circuit's "PACER" website confirms that on November 28, 2007, Defendant's appeal was docketed and assigned Court of Appeals Docket No. 07-41182.